



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

April 13, 2011

John McGee
Executive Director for Planning and Policy
ADOT, Office of the Director
206 South Seventeenth Avenue
Phoenix, Arizona 85007-3213

Dear John:

It was very disappointing to receive your letter of April 7, 2011. We certainly understand that, given the possibility of a referendum, ADOT would want to proceed cautiously in distributing funds to the City. However, we were not prepared for you to give the City an ultimatum that the City is powerless to meet. Specifically, you state that the city must give ADOT "written assurance that the City can, and will accept full ownership, control and maintenance responsibility over the Transfer Segment. . . no later than May 30, 2011. . . .Until such assurances are received, ADOT cannot move forward with the payment."

As you know, the referendum seeking to overturn the City's route transfer decision is an action taken by a group of citizens independent from the City. These citizens are exercising their constitutional right to challenge the City's decision. The City has absolutely no control over the outcome or legal effect of this pending referendum. If in fact it is determined that they have properly filed their referendum petition and have met the required signature threshold, then per the pronouncements of the Arizona Supreme Court, the City is stayed from taking ownership of the Transfer Segment. We have previously cited to you the case of *Queen Creek Land and Cattle Corp. v. Yavapai County Bd. Of Supervisors*, 108 Ariz. 449, 501 P.2d 391 (1972), where the Arizona Supreme Court stated:

The referendum stays the effect of the action of the law-making body until the electorate has had an opportunity to approve or reject it.

In this case, Sedona is the sole "law-making body" whose actions can be stayed by the referendum. Per this holding, we cannot assume ownership of the Transfer Segment until after the referendum is determined. We have previously shared this case with you and have not received a contrary opinion from your legal counsel that this is in fact the law. However, we have also offered a

number of options that ADOT could do in order to be assured that the route transfer agreement remains viable if the people of Sedona in deciding the referendum so choose.

First, we offered to agree to hold the \$10.6 million, and if the referendum were successful in overturning the route transfer, to return that sum plus interest to ADOT. The City, upon council approval, would be willing to commit to this result in writing and to provide any other reasonable assurances that ADOT would require in order to protect these funds. This option would present no risk whatsoever, to ADOT. The advantages of this option are that it would satisfy the funding requirement of the transfer agreement while at the same time respecting the referendum process. Your letter provides no explanation whatsoever as to why this option is not acceptable.

Second, we offered to agree to amend the transfer agreement to move the funding deadline from June 30, 2011 to a time after the referendum is determined. This simple measure would again respect the referendum process and would allow the transfer agreement to proceed if the people of Sedona, through an election so chose. Again, your letter of April 7th is silent on why this proposal is unacceptable.

In response to these two very viable options, you have offered the City a third, wholly unworkable option. That option is to essentially ignore the referendum process, ignore court precedent and agree to accept ownership of the roadway before May 30th and before the referendum has even been decided. It is impossible for the City to consider this option for a number of reasons. First and foremost, the City is powerless in light of the referendum to agree to it, as described above. Second, because the City is powerless to accept this sole option offered by ADOT, the people of Sedona will be robbed of their right to make a decision regarding roadway ownership, as the transfer agreement will terminate unless the funds are transferred by June 30th.

It is puzzling why you would offer an option that effectively ensures ADOT will retain liability for the roadway in perpetuity. Under the options offered by the City, there is a potential way for the transfer agreement to survive and for ADOT to transfer the roadway, and its associated liability, within a few short months after a referendum vote. In contrast, because the City cannot legally accept ADOT's singular option, if ADOT does not make the payment (as you have indicated it will not), as of June 30th the transfer agreement will be voided and ADOT will continue to own the transfer segment.

We are struggling to understand the logic of the option you have offered and we hope that you might be able to provide a more detailed explanation. After months of working together to find a solution to this matter, it would be unfortunate if our efforts were lost due to the City not being able to meet the impossible conditions of your sole option. To preserve the hard work and long

hours that both ADOT and the City have committed to this process, we respectfully ask you to reconsider the options offered by the City. We also request that if you do reject both of these options, you provide us with a detailed explanation as to why. If this process is going to break down at this late juncture, we would appreciate having your explanation to provide to the citizens of Sedona.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Ernster', with a long horizontal flourish extending to the right.

Tim Ernster
City Manager

Cc: Mayor Rob Adams
Mike Goimarac, Sedona City Attorney
John S. Halikowski, Director of ADOT
Bill Feldmeier, Chairman, ADOT Board
Bobbie Lundstrom, Vice-Chairwoman, ADOT Board
Felipe Zubia, ADOT Board Member
Victor Flores, ADOT Board Member
Steve Christy, ADOT Board Member
Kelly Anderson, ADOT Board Member
Hank Rogers, ADOT Board Member
Joe Acosta, JR., Assistant Attorney General
John Haper, Flagstaff District Engineer
Audra Merrick, Flagstaff Development Engineer
Jennifer Toth, Assistant Director, Multimodal Planning Division
Matthew Burdick, Assistant Director, Communication and Community Partnerships